

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2623 OF 2006

Shivanand Madivappa Hiremath  
and 7 Ors. ....Petitioners.

**Versus**

State of Maharashtra ....Respondent.

.....  
Mr.Ujwal R. Agadsane, Advocate for the  
Petitioners.  
Mr.S.R.Shinde, APP, for State.  
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**CORAM : SMT.V.K.TAHILRAMANI, J.**

**DATED : 26th February, 2007.**

**P.C.:**

1. Heard the learned Advocate for the petitioners-orig. accused and the learned APP for the State.

2. The petitioners are facing prosecution in Sessions Case No.78 of 2002. The said case is under Sections 498-A, 306 r/w. 34 of IPC. In the said case, the prosecution preferred an application for being allowed to lead secondary evidence in respect of three letters dated 26.12.2001, 04.1.1993 and 11.02.1993. The said application came to be allowed by the learned

Sessions Judge by order dated 30.10.2006. Being aggrieved thereby, this Petition has been preferred.

3. It is the case of the prosecution that these letters written by the deceased were seized by the Investigating Officer during investigation. They were sent to the handwriting expert. Report was received from the handwriting expert. However, thereafter these three letters are found to be missing and they were not traceable, hence the prosecution preferred an application for leading secondary evidence.

4. It is the case of the prosecution that these three letters which were written by the deceased were an important piece of evidence. Xerox copies of these letters were supplied to the accused at the time of filing charge-sheet. The prosecution has examined the Investigating officer PW-3 PSI Kulkarni, who has stated about the letters being missing. Besides this the prosecution has examined Adv.Hosmani at Exh.62. It is the case of the prosecution that these letters were in Kannada language and they were

translated in Marathi by Adv.Hosmani. The translated copies of these letters were also given to the petitioners-orig. accused along with charge-sheet. The Investigating Officer in his evidence has stated that he has seized two inland letters under panchnama Exh.82. He has also seized suicide note written by the deceased. He has stated that these three documents were given to Adv.Hosmani to translate from Kannada into Marathi. Advocate Shri.Hosmani translated the said documents from Kannada to Marathi and he also gave his affidavit along with these letters. The Investigating Officer has stated that he has made photo copies of the three documents. It is further stated that the original letters and the Xerox copies of thereof have been placed in charge sheet. The said documents bears his signatures. On being shown the Xerox copies of the original three documents, the Investigating Officer has stated that they are the same as per the originals. So also Advocate Shri.Hosmani has stated that he received these three documents in Kannada language. He translated them from Kannada into Marathi and thereafter he has produced the translated copies along with his affidavit.

5. Looking to these facts, it is seen that the prosecution has led sufficient evidence and proved that the contents of Xerox copies are made from the originals. From the evidence on record, it is seen that the prosecution has established that the original letters have been lost. Hence the prosecution is entitled to lead secondary evidence. Provisions of Section 65 of the Evidence Act have been complied with. Hence no case is made out for interference with the order of the learned Sessions Judge dated 30.10.2006.

6. Writ Petition is rejected.

**(SMT.V.K.TAHILRAMANI, J.)**